IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC.,	)	
	)	
Plaintiff,	)	
	)	Case No. 2:22-cv-203-JRG
vs.	)	
	)	JURY TRIAL DEMANDED
MICRON TECHNOLOGY, INC.; MICRON	)	
SEMICONDUCTOR PRODUCTS, INC.;	)	
MICRON TECHNOLOGY TEXAS LLC,	)	
	)	
Defendants.	)	
	)	

SUPPLEMENTAL PROTECTIVE ORDER

WHEREAS, The Honorable Rodney Gilstrap, United States District Judge, entered the Protective Order to govern discovery in the above-captioned matter ("this action") on November 1, 2022 (Dkt. No. 46), and may enter subsequent protective orders ("Protective Order"); and

WHEREAS, Texas Instruments Incorporated ("TI"), a non-party to this action, may produce confidential source code, schematics, and other documents in this action that include or incorporate CONFIDENTIAL INFORMATION belonging to TI ("TI Confidential Information");

WHEREAS Plaintiff Netlist, Inc. ("Plaintiff"); Defendants Micron Technology, Inc.; Micron Semiconductor Products, Inc.; and Micron Technology Texas LLC (collectively "Defendants") (together, hereinafter referred to as "the Parties"), and Non-Party TI have agreed to the additional provisions in this Supplemental Protective Order to protect against misuse or disclosure of such TI Confidential Information, which provisions supersede the Protective Order to the extent that they conflict;

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. The term Source Code Material defined in paragraph 8 of the Protective Order further includes symbolic representations of analog electric or electronic circuits from which the physical structure of a chip is directly derived ("TI Chip-Level Schematics").

2. All Source Code Material produced or offered for inspection by TI ("TI Source Code Material") is designated "HIGHLY CONFIDENTIAL – TI SOURCE CODE," and shall be subject to all provisions of the Protective Order governing "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," except to the extent inconsistent with this Supplemental Protective Order;

3. Notwithstanding the provisions of paragraph 10(a) of the Protective Order, "HIGHLY CONFIDENTIAL – TI SOURCE CODE" materials may only be disclosed to, and only reviewed by, up to three (3) outside consultants or experts who are not currently employed by a competitor of TI, not currently serving as a non-litigation consultant for a competitor of TI, or who at the time of retention, are not anticipated to become an employee or non-litigation consultant of a competitor of TI;

4. Notwithstanding the provisions of paragraph 10(c)i. of the Protective Order, TI Source Code Material shall be provided only on one "stand-alone" computer (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet or the Internet). The stand-alone computer will be configured to prevent additional peripheral devices (e.g., USB thumb drives) from being connected to it. The stand-alone computer shall be made available for inspection at Consilio's secure escrow facility in Dallas, Texas, and the receiving Party shall be responsible for paying all expenses related to the use of such secure third-party escrow facility;

5. Notwithstanding the provisions of paragraph 10(c)x. of the Protective Order, in the event

copies of TI Source Code Material printouts are used as exhibits in a deposition, additional

copies may be made for the witness and outside counsel for the parties. The printouts shall

not be provided to the court reporter, except that the one copy for the witness which will

be used as an exhibit can be provided to the court reporter for the purpose of marking the

exhibit, and the further copies of the original TI Source Code Material printouts made for

the deposition or trial shall be destroyed at the conclusion of the deposition or trial. The

original copies of deposition exhibits designated "HIGHLY CONFIDENTIAL –TI

SOURCE CODE" will be maintained by the deposing party and the non-deposing party is

allowed to maintain one copy;

6. Notwithstanding the provisions of paragraph 10(c)xi. of the Protective Order, during

review of TI Source Code Material, a receiving Party's outside counsel and/or experts shall

be entitled to take notes relating to the TI Source Code Material but may not copy any lines

of the TI Source Code Material into the notes. If any outside counsel and/or expert seeks

to take notes, all such notes will be taken on bound (spiral or other type of permanently

bound) notebooks or on a non-networked laptop computer that is not connected to the

Internet, but no other recording devices, including, but not limited to, audio, image or video

recorders; or wireless devices with data transmission capabilities or recording capabilities

(*e.g.*, cameras), will be permitted in the room housing the stand-alone computer, unless

agreed otherwise by the parties in writing. Further, no other written, photographic, or

electronic record of the Source Code Material is permitted except as otherwise provided

herein. No loose paper or other paper that can be used in a printer may be brought into the secure room;

7. Notwithstanding the provisions of paragraph 10(c)xiii. of the Protective Order, no more than 10% or 250 pages of the total TI Source Code Material (not including copies of original printouts) whichever is greater, for any software release (or in the case of hardware TI Source Code Material, for any hardware product), no more than 50 pages of TI Chip-Level Schematics per product, and no continuous blocks of TI Source Code Material that exceed 15 pages per product, may be in printed form at any one time, without the express written consent of TI, which shall not be unreasonably denied. All such printouts shall be made on plain white paper. No additional copies of the TI Source Code Material shall be provided by TI. No electronic copies of TI Source Code Material shall be made without prior written consent of TI, except as necessary to create documents which, pursuant to the Court's rules, procedures and order, must be filed or served electronically (*e.g.* expert reports and court filings);

8. Absent written permission from TI, persons not permitted access to "HIGHLY CONFIDENTIAL – TI SOURCE CODE" shall not be present at depositions while TI Source Code Material is discussed or otherwise disclosed. Pre-trial and trial proceedings shall be conducted in a manner, subject to the supervision of the Court, to protect TI Source Code Material from disclosure to persons not authorized to have access to such TI Source Code Material. Any Party intending to disclose or discuss TI Source Code Material at pretrial or trial proceedings must give advance notice to the TI to assure the implementation of the terms of this Supplemental Protective Order;

9. The Parties will give TI prior notice of, and an opportunity to object to, any intended use of TI Source Code Material at any hearing or trial in this case. Said notice shall (a) be served by email on counsel for TI at least five (5) business days prior to the hearing or first day of trial, (2) identify the TI Source Code Material with specificity while redacting any other Party's Designated Materials and (3) identify the measures the party intends to rely upon to protect the TI Source Code Material when used at any hearing or trial consistent with this Addendum. This section shall not limit in any way the use of TI Source Code Material during the cross-examination of any witness otherwise permitted access to such TI Source Code Material, as long as the Parties take all necessary steps to protect and maintain the confidentiality of any such TI Source Code Material;

10. The receiving Party's Counsel of Record shall keep log(s) recording the identity of each individual beyond outside counsel of record in this Action for the Parties to whom each hard copy of TI Source Code Material is provided and when it was provided to that person in the first instance. For electronic copies of TI's Source Code allowed pursuant to Paragraph 7, the receiving Party's Counsel of Record shall keep log(s) recording the identity to whom, the date and time each electronic copy of TI Source Code Material is disseminated. Within thirty (30) days after the issuance of a final, non-appealable decision resolving all issues in this action, the receiving Party must serve upon TI the log(s). In addition, any outside experts of the receiving Party to whom the paper copies of the TI Source Code Material were provided must certify in writing that all copies of the TI Source Code Material were destroyed or returned to the counsel who provided them the information and that they will make no use of the TI Source Code Material, or of any knowledge gained from the source code in any future endeavor.